IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

WEDNESDAY, THE EIGHTEENTH DAY OF AUGUST
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE SRI DEVINDER GUPTA, THE CHIEF JUSTICE

and
THE HON'BLE Mr. JUSTICE C.V.RAMULU

WAMP No. 2250 of 2004 & WRIT APPEAL NO : 1197 of 2004

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated 18/07/2004 in WP No. 13079 OF 2002 on the file of the High Court.)

Between:

Shamantula Rajaiah, S/o. Sailu,
R/o. Palamakula Village, Nangunoor Mandal, Medak District.

..... APPELLANT

AND

1.Vardolu Ashaiah, S/o. Mallaiah,
R/o. Palamakula Village, Nangunoor Mandal, Medak District.
2. The Election Officer ,Stage II Sri P. Narsimha Reddy Primary School, Primary School, Giraipally Village, Kondapak Mandal, Medak District.
3. Dumbala Narasaiah, S/o. Bhoomaiah,
Primary School, Giraipally Village, Kondapak Mandal, Medak District.
4. Dumbala Srinivas, S/o. Mallaiah,
Primary School, Giraipally Village, Kondapak Mandal, Medak District.
5. Dumbala Srinivas, S/o. Bhoomaiah,
Primary School, Giraipally Village, Kondapak Mandal, Medak District.
6.Shila Narayana, S/o. Bal Narasaiah,
Primary School, Giraipally Village, Kondapak Mandal, Medak District.
7.The Junior Civil Judge-cum-Election Tribunal, Siddipet, Medak District.

.....RESPONDENTS

WAMP No.2250 of 2004

Petition under Section 151 C.P.C. praying that for the reasons stated in the accompanying affidavit, the Hon'ble Court will be pleased to amend the prayer in W.P.No. 13079 of 2002 by including the following prayer:

i. to set aside the order in O.P. No. 7 of 2001, dated: 12.7.2002 in the interest of justice.

Counsel for the Appellant: Mr.A.SUDERSHAN REDDY

Counsel for Respondent No.1: Mr.D.Jagan Mohan Reddy

Counsel for Respondents 2 to 7: None appeared.

The Court made the following :

ORAL JUDGMENT:

(per The Honourable Sri Devinder Gupta, the Chief Justice)

The appellant before us was declared elected as Sarpanch of Palamakula Gram Panchayt of Nagunoor Mandal, Medak District in the election held on 14.8.2001 after counting of votes with a margin of three votes only. Respondent No.1 questioned the election of the appellant by filing the petition before the Election Tribunal in O.P.No.7 of 2001, inter alia, for recounting of votes, and, for setting aside the election of the appellant. The Election Tribunal on 4.7.2002 passed an order allowing the prayer for recounting. Recounting was ordered to be done on 6.7.2002, which was so done, and, report was submitted to the Court. Election Petition was, thereafter, posted for hearing on 10.7.2002, but, was actually heard on 11.7.2002, and, on 12.7.2002, Election Petition was allowed, and, the election of the appellant

was set aside. On 17.7.2002, Writ Petition was filed by the appellant praying to declare the order of the 7th Respondent, dated: 4.7.2002, as arbitrary, illegal and contrary to the provisions of the Andhra Pradesh Panchayat Raj Act, 1994 and the Andhra Pradesh Panchayat Raj Conduct of Elections Rules, 1994, and, consequently to set aside the said order dated: 4.7.2002. In the grounds mentioned in support of the Petition, the appellant, in addition to questioning the legality and validity of the order dated: 4.7.2002 also made a grievance about the manner in which recounting was done. But, it is pertinent to note that the Writ Petition was filed on 17.7.2002. There was no prayer made to set aside the order of the Election Tribunal, dated: 12.7.2002 finally disposing of the Election Petition declaring the election of the appellant as not valid, thereby, setting aside the same. It is also pertinent to mention that the Election Tribunal passed separate speaking orders on 4.7.2002 and 12.7.2002.

The learned Single Judge dismissed the Writ Petition holding that it was within the jurisdiction of the Election Tribunal to order recounting and that the Election Tribunal rightly exercised its jurisdiction, and, thus, found no illegality in the order dated: 4.7.2002. This order was challenged before us in the Appeal. Appeal was posted on 4.8.2004, on which date, we allowed an opportunity to the learned counsel for the appellant to satisfy us as to the very maintainability of the Writ Petition to challenge the interim order dated: 4.7.2002 without challenging the final order passed in Election Petition on 12.7.2002. Instead of satisfying us about the maintainability of the Petition, appellant has now come forward with a prayer to amend the Writ Petition by including the prayer therein to set aside the final order dated: 12.7.2004 passed in O.P.No. 7 of 2001, by filing W.A.M.P. No.2250 of 2004.

It is alleged in the application seeking amendment that the order of Tribunal dated: 12.7.2002 is only consequential to the

order dated: 4.7.2002 and the omission to challenge the said order is only a technical lacuna and that no prejudice would be caused to anybody, in case, this technical lacuna is permitted to be removed/rectified by permitting the amendment to be carried out.

We have heard the learned counsel for the appellant, and, gone through the record. We do not find any force in the statement made before us in support of the plea to permit the appellant to carry out amendment at this belated stage. Allowing

amendment, at this stage, would amount to permitting the appellant to question the legality and validity of the order dated: 12.7.2002, after a lapse of more than two years, and, that too, after the recounting has been done by the orders of the Election Tribunal, which was found to be in order by the learned Single Judge, and which order of the learned Single Judge is under challenge before us. It is not the case of the appellant that the appellant was not aware of the fact of final decision of the O.P. and that he was not possessed of the copy thereof. Allowing amendment at this stage would cause prejudice to the person who had filed the O.P. questioning the election of the appellant. Thus, we do not find any ground to allow WAMP No. 2250 of 2004 and proceed to dismiss the same.

In the absence of any challenge to the final order in view of the dismissal of the amendment petition, we find that the writ petition is not maintainable and deserves to be dismissed. Accordingly, the Writ Appeal is dismissed. No costs.

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DEVINDER GUPTA, C.J.

18.8.2004.

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C.V.RAMULU, J.

VR.

To

1. The Election Officer, Stage II Sri P. Narsimha Reddy Primary School, Primary School, Giraipally Village, Kondapak Mandal, Medak District.
2.The Junior Civil Judge-cum-Election Tribunal, Siddipet, Medak District.

3. Two CD Copies.